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on behalf of SMC Leveraged Fund, LLC

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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SECURITIES INVESTOR PROTECTION	:
CORPORATION,	: Adv. Pro. No. 08-01789 (BRL)
	:
Plaintiff,	: SIPA Liquidation
	:
v.	:
	:
BERNARD L. MADOFF INVESTMENT	:
SECURITIES LLC,	:
	:
Defendant.	:
-----X	

**OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIMS OF**  
**SMC LEVERAGED FUND, LLC<sup>1</sup>**

SMC Leveraged Fund, LLC ("Claimant"), by and through its General Partner,  
Spring Mountain Capital, LP ("Spring Mountain") and Spring Mountain's attorneys, hereby files  
this Objection to the Trustee's Determination of Claims, and respectfully represents as follows:

1. Claimant invested in Gabriel Capital, L.P. ("Gabriel") which, in turn,  
invested in Bernard L. Madoff Investment Securities LLC ("BLMIS"). It is Claimant's

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<sup>1</sup> A filing under Federal Rule of Bankruptcy Procedure 2019 will be made promptly, to the extent required.

understanding that Gabriel invested approximately 30 percent of its capital with BLMIS.

Through this investment in an underlying fund with BLMIS exposure, Claimant lost \$1,471,555.

2. Claimant duly filed Customer Claims (Claim Nos. 011543 and 014803) with the Trustee in the amount of \$1,471,555.

3. On December 8, 2009, by Notice of Trustee's Determination of Claim (see Exhibit A attached hereto), the Trustee notified Claimant that its claims had been denied on the following basis:

Based on a review of available books and records of BLMIS by the Trustee's staff, you did not have an account with BLMIS. Because you did not have an account, you are not a customer of BLMIS under SIPA as that term is defined at 15. U.S.C. § 7811(2). Accordingly, your Claim for securities and/or a credit balance is **DENIED**.

4. Claimant objects to the Trustee's determination that it was not a "customer" of BLMIS for the reasons, to the extent relevant, set forth in the opposition motions submitted by the following similarly-situated claimants: (1) Susan Saltz Charitable Lead Annuity Trust and Susan Saltz Descendants Trust, Objections to Trustee Picard's Determination of Claims, filed December 22, 2009 (Docket No. 1111); (2) John A. Jamison, *et al* by Anchor Holdings, LLC, Objection To Determination of Claims of John A. Jamison, Et Al by Anchor Holdings, LLC, filed December 28, 2009 (Docket No. 1120); and (3) Esteban Arce Herrera and Nieves Santisteban, Objection to Trustee's Determination of Claim, filed December 30, 2009 (Docket No. 1141). Claimant does not waive any additional grounds on which it might object to the Trustee's determination and expressly reserves the right to object to the Trustee's determination on additional grounds in the future.

5. Claimant additionally files this objection for the purpose of preserving any rights which may be recognized by this Court for persons who made indirect investments in BLMIS through feeder funds.

6. Claimant respectfully requests that any hearing relating to this Opposition be scheduled at the same time as the hearings for objections by other similarly-situated claimants including, at a minimum, those claimants referenced above.

Dated: New York, New York  
January 7, 2010

SIMPSON THACHER & BARTLETT LLP

By /s/ Linda H. Martin

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